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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DELBERT WILLIAMS,
12 CDCR #D-68440,

13 Plaintiff,

14 vs.

15 UNNAMED DEFENDANTS,
16

17 Defendants.
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Civil No. 13cv0046 GPC (BGS)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

19 Delbert Williams (“Plaintiff”), currently incarcerated at the California Medical Facility
20 in Vacaville, California, and proceeding pro se, has filed a civil action.

21 **I. Failure to Pay Filing Fee or Request IFP Status**

22 All parties instituting any civil action, suit or proceeding in any district court of the
23 United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See*
24 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay this filing fee only
25 if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C.
26 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
27 169 F.3d 1176, 1177 (9th Cir. 1999).

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1 Plaintiff has not prepaid the \$350 filing fee required to commence a civil action, nor has
 2 he submitted a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a). Therefore, the action
 3 cannot yet proceed. *Id.*

4 **II. Conclusion and Order**


5 For the reasons set forth above, the Court hereby:

6 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 7 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

8 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
 9 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 10 IFP which includes a certified copy of his trust account statement for the 6-month period
 11 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).¹

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
 13 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
 14 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
 15 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
 16 prejudice and without further Order of the Court.

17 DATED: January 11, 2013

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 19 HON. GONZALO P. CURIEL
 20 United States District Judge
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25 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 26 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be
 27 screened and may be dismissed sua sponte and regardless of his fee status if the Court finds it frivolous
 28 or malicious, if it fails to state a claim, or if he seeks monetary relief from a defendant who is immune
 pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122,
 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the
 court to sua sponte dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes*
v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required by 28 U.S.C.
 § 1915A(b) of all prisoner complaints).